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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,836	12/15/2003	Jon Flidner	JF-1-gw	5493
7590 04/07/2005			EXAMINER	
Michael I. Kroll 171 Stillwell Lane Syosset, NY 11791			ARYANPOUR, MITRA	
			ART UNIT	PAPER NUMBER
			3711	
DATE MAILED: 04/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/735,836	Applicant(s) FLIEDNER ET AL.	
	Examiner Mitra Aryanpour	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>15 December 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to a billiard rack, classified in class 473, subclass 1.
 - II. Claims 9-12, drawn to a method of playing pocket billiards using the billiard rack, classified in class 473, subclass 1.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the product can be used to play two sets of seven balls.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Michael Kroll on 01 April 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-12 are

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withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

6. Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 8 is dependent from itself.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over White/Yee (White et al CA 2,298,246A1) in view of Cayton (4,452,450).

Regarding claim 1, White et al shows a billiards rack for receiving billiards balls for use on a pocket billiards table, the table having a foot string (62), a foot spot (64) and a head string (52), comprising: a first loop (the broadest reasonable interpretation of loop would include

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aperture section 84), said first loop (84) being triangular for receiving a plurality of billiards balls therein (see figure 1), said first loop (84) having an inner (inner wall 104) and outer surface (exterior wall 114); a second loop (again the broadest reasonable interpretation of loop would include aperture section 86), said second loop (86) being triangular for receiving a plurality of billiards balls therein, said second loop (86) having an inner (inner wall 106) and outer surface (exterior wall 116); wherein said outer surface of said first and second loops are fixedly joined together (see figure 3). White et al teaches adjacent geometric shaped loops or racks. White et al does not expressly teach the geometric shape could be circular. Cayton teaches the geometric loop or rack can be circular.

Regarding claim 2, White et al shows said first (84) and second (86) loop are the same size (see figure 3).

Regarding claim 3, White et al shows the first (84) and second (86) loop are each sized to receive three billiards balls. White et al as modified above shows the loops to be circular and can accommodate seven billiard balls, wherein six balls are disposed around the perimeter of each loop and one ball is disposed in the center of each loop.

Regarding claim 4, White et al shows said first (84) and second (86) loop are joined together with a bonding agent (the broadest reasonable interpretation of bonding agent would include the molding process).

Regarding claim 5, White et al shows said first (84) and second loop (86) are made of rigid material (they can be made of any suitable material such as wood).

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Regarding claim 6, White et al shows said first (84) and second loop (86) are made of semi-rigid material (the broadest reasonable interpretation of semi-rigid material would include the either plastic or aluminum).

Regarding claim 7, White et al shows that the assembly can be made from any suitable material, but does not expressly disclose if the materials can be flexible. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to made the assembly from a flexible material, because Applicant has not disclosed that making the assembly from a flexible material, provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the material taught by White et al or the claimed flexible material because both material perform the same function of housing billiard balls. Therefore, it would have been an obvious matter of design choice to modify White et al to obtain the invention as specified in claim 7.

Regarding claim 8, White et al shows a rigid plate (base flange 130) for joining said first (84) and second (86) loops together, said plate connecting a point on said outer surface tangent to said first and second loop, wherein said plate is parallel to a line connecting the centers of said first and second loop (see figure 5).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 571-272-4405. The examiner can normally be reached on Monday - Friday 8:00 to 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
01 April 2005



MITRA ARYANPOUR
PRIMARY EXAMINER